



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

**Requestor Name**

DAVID KINNISON, DC

**Respondent Name**

TEXAS MUTUAL INSURANCE CO

**MFDR Tracking Number**

M4-14-1909-01

**Carrier's Austin Representative**

Box Number 54

**MFDR Date Received**

FEBRUARY 27, 2014

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "A FCE (97750) and a DSEMG (96002, 96004) was completed. The carrier only paid for the FCE and not the DSEMG. A call was placed to the Texas Mutual bill review and auditing department on several different occasion to get clarification on how the claim was paid. I was told by representative that the DSEMG was unnecessary. I have included in this packet the EOBs and reconsideration request that the carrier received from our office."

**Requestor's Letter of Necessity:** "The ODGs are used primarily for parameters concerning treatment as opposed to impairment rating evaluations and in this case, a Designated Doctor's evaluation and impairment. The information from the ODGs should not be taken out of context in an attempt and/or effort to deny the use and reimbursement of DSEMG for the purposes of a state-appointed evaluation where objectivity and reliability are necessary as allowed by Rule 127.10(c). We must also express concerns that while TDI-DWC has accepted the use and application of DSMEG for distinguishing between DRE categories used in the impairment rating process for the Designated Doctor program, Texas Mutual Insurance Company has taken a position contrary to that by denying the use, application, acceptance and reimbursement of this procedure. Therefore, we are respectfully requesting that Texas Mutual Insurance Company reconsider its decision to deny the reimbursement of this DSEMG procedure."

**Amount in Dispute:** \$200.00

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary:** "Texas Mutual reviewed the documentation and concluded the surface EMG, 96002, and physician review of the motion testing, 96004 are essential components of the FCE."

**Response Submitted By:** Texas Mutual Insurance Co.

### **SUMMARY OF FINDINGS**

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
July 27, 2013	CPT Code 96002-59	\$50.00	\$0.00
	CPT Code 96004-59	\$150.00	\$0.00
TOTAL		\$200.00	\$0.00

## ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.204 and §134.203, effective March 1, 2008, sets the reimbursement guidelines for the disputed service.
3. The services in dispute were reduced/denied by the respondent with the following reason codes:
  - CAC-97-The benefit for this service is included in the payment/allowance for another service/procedure that has already been adjudicated.
  - CAC-193-Original payment decision is being maintained. Upon review, it was determined that this claim was processed properly.
  - 217-The value of this procedure is included in the value of another procedure performed on this date.
  - 724-No additional payment after a reconsideration of services.

### **Issues**

Is the value of code 96002 and 96604 included in the value of the Functional Capacity Evaluation (FCE)?

### **Findings**

On the disputed date of service the requestor billed CPT codes 97750-FC-59, 96002-59 and 96004-59. According to the explanation of benefits the respondent denied reimbursement for the disputed services based upon reason code "CAC-97".

28 Texas Administrative Code §134.203(a)(5) states "Medicare payment policies" when used in this section, shall mean reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies as set forth in the Centers for Medicare and Medicaid Services (CMS) payment policies specific to Medicare."

In order to determine if codes 96002 and 96004 are components of 97750-FC, the Division reviewed rule 134.204 and the American Medical Association Current Procedural Terminology code definitions.

- 28 Texas Administrative Code §134.204(g) defines the elements of a FCE as:
  - (1) A physical examination and neurological evaluation, which include the following:
    - (A) appearance (observational and palpation);
    - (B) flexibility of the extremity joint or spinal region (usually observational);
    - (C) posture and deformities;
    - (D) vascular integrity;
    - (E) neurological tests to detect sensory deficit;
    - (F) myotomal strength to detect gross motor deficit; and
    - (G) reflexes to detect neurological reflex symmetry.
  - (2) A physical capacity evaluation of the injured area, which includes the following:
    - (A) range of motion (quantitative measurements using appropriate devices) of the injured joint or region; and
    - (B) strength/endurance (quantitative measures using accurate devices) with comparison to contralateral side or normative database. This testing may include isometric, isokinetic, or isoinertial devices in one or more planes.
  - (3) Functional abilities tests, which include the following:
    - (A) activities of daily living (standardized tests of generic functional tasks such as pushing, pulling, kneeling, squatting, carrying, and climbing);
    - (B) hand function tests that measure fine and gross motor coordination, grip strength, pinch strength, and manipulation tests using measuring devices;
    - (C) submaximal cardiovascular endurance tests which measure aerobic capacity using stationary bicycle or treadmill; and
    - (D) static positional tolerance (observational determination of tolerance for sitting or standing).
- CPT code 96002 is defined as "Dynamic surface electromyography, during walking or other functional activities, 1-12 muscles."
- CPT code 96004 is defined as "Review and interpretation by physician or other qualified health care professional of comprehensive computer-based motion analysis, dynamic plantar pressure

measurements, dynamic surface electromyography during walking or other functional activities, and dynamic fine wire electromyography, with written report.”

The requestor appended modifier “59-Distinct Procedural Service” to codes 96002 and 96004.

- Modifier “59” is defined as “Under certain circumstances, it may be necessary to indicate that a procedure or service was distinct or independent from other non-E/M services performed on the same day. Modifier 59 is used to identify procedures/services, other than E/M services, that are not normally reported together, but are appropriate under the circumstances. Documentation must support a different session, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same individual. However, when another already established modifier is appropriate it should be used rather than modifier 59. Only if no more descriptive modifier is available, and the use of modifier 59 best explains the circumstances, should modifier 59 be used.”

A review of the submitted reports does not support a “different session, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same individual.” The Division finds that the requestor has not supported the use of modifier “59.”

Based upon 28 Texas Administrative Code §134.204(g)(1)(E), neurological and sensory testing is a component of the FCE; therefore, the requestor has not supported that the disputed services are a separate service. As a result, reimbursement is not recommended.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has not established that additional reimbursement is due. As a result, the amount ordered is \$0.00.

### ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

### **Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

02/05/2015  
\_\_\_\_\_  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, 37 *Texas Register* 3833, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**